

FILED

MAR 03 2014

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MICHAEL BIRTHMARK,

Plaintiff,

vs.

DEPT. OF INSTITUTIONS/DEPT.
OF CORRECTIONS, MONTANA
STATE PRISON AND THE
IMMEDIATE MEMBERS OF THE
BOARD OF PARDONS & PAROLE,
and PRIVATE STUDIES GROUP OF
MIND READING PSYCHICS, *et al.*,

Defendants.

CV 13-22-H-DWM

ORDER

The Findings and Recommendations of United States Magistrate Judge Keith Strong are now before the Court. (Doc. 8.) Judge Strong recommends Plaintiff Michael Birthmark's Amended Complaint be dismissed. (*Id.* at 7.) Judge Strong filed his Findings and Recommendations on February 6, 2014. Objections were due February 22, 2014. *See* 28 U.S.C. § 636; Fed. R. Civ. P. 6(d). No objections were filed.

The Court reviews the Findings and Recommendations of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus.*

Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Strong’s Findings and Recommendations are well-reasoned and absent clear error. Mr. Birthmark’s Amended Complaint does not bring specific claims and factual allegations against the named Defendants, in violation of Federal Rule of Civil Procedure 8. It accordingly fails to state any claim upon which relief may be granted and is subject to dismissal under Federal Rule of Civil Procedure 12(b)(6). *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 n.3 (2007). The complaint lacks any arguable basis in law or fact. Dismissal is appropriate and will be ordered.

Mr. Birthmark’s failure to prosecute this action provides additional grounds for dismissal of this action. On two occasions Mr. Birthmark was told of the requirement that he must advise the Court of any change of address and its effective date. (Doc. 6 at 15-16; Doc. 8 at 7.) The copy of Judge Strong’s Findings and Recommendations mailed to Mr. Birthmark at his address of record was returned undeliverable. (Doc. 9.) The Plaintiff has failed to prosecute this action and dismissal is appropriate pursuant to Federal Rule of Civil Procedure 41(b).

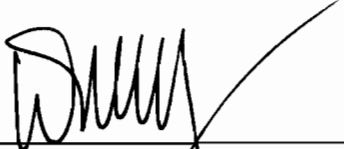
IT IS ORDERED that Judge Strong's Findings and Recommendations, (Doc. 8), are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Plaintiff Michael Birthmark's Amended Complaint is hereby DISMISSED WITH PREJUDICE. The Clerk of Court shall close this case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court shall ensure the docket reflects the Court's certification that any appeal of this decision would not be taken in good faith. *See* Fed. R. App. P. 24(a)(3)(A). The record makes plain that Mr. Birthmark's Complaint is frivolous as it lacks any substance in law or fact.

IT IS FURTHER ORDERED that the Clerk of Court shall ensure that the docket reflects that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Mr. Birthmark failed to state any claim upon which relief may be granted and his claims are frivolous.

DATED this 3rd day of March, 2014.



Donald W. Molloy, District Judge
United States District Court